

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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: **Chapter 11 Case No.**
: **08-13555 (SCC)**
: **(Jointly Administered)**
: **Debtors.**
: **LEHMAN BROTHERS HOLDINGS INC., et al.,**
: **In re**
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**STIPULATION, AGREEMENT AND ORDER BETWEEN
BNC MORTGAGE LLC AND CLAIMANT BOOR PROVIDING FOR
DISMISSAL OF CLAIMANT'S PROOF OF CLAIM NO. 33325 AND WITHDRAWAL
OF PLAN ADMINISTRATOR'S OBJECTION TO CLAIM, WITHOUT PREJUDICE
AS TO BOOR'S RIGHTS, IF ANY, AGAINST NON-DEBTOR PERSONS OR ENTITIES**

This stipulation, agreement, and order (the "Stipulation, Agreement and Order") is entered into by and between Arthur and Joanne Boor ("Boor") and Lehman Brothers Holdings Inc. ("LBHI"), as Plan Administrator pursuant to the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the "Plan") on behalf of BNC Mortgage LLC ("BNC"). LBHI and Boor are collectively referred to in this Stipulation, Agreement and Order as the "Parties" and each a "Party."

RECITALS

A. Commencing on September 15, 2008 (as applicable, the "Commencement Date") and periodically thereafter, LBHI and certain of its affiliates (collectively, the "Chapter 11 Estates") commenced voluntary cases (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

B. By order, dated July 2, 2009 [ECF No. 4271], the Bankruptcy Court established September 22, 2009, as the deadline to file proofs of claim (each a "Proof of Claim") against the

Chapter 11 Estates.

C. On September 18, 2009, Boor filed unsecured/non-priority Proof of Claim No. 33325 against BNC. In part, Proof of Claim No. 33325 seeks rescission of Boor's residential mortgage loan for which BNC was the lender (the "Loan").

D. On October 7, 2013, LBHI filed Plan Administrator's Objection to Proof of Claim No. 33325 [ECF No. 40292] ("Objection").

E. On November 5, 2013, Boor submitted a response to the Objection [ECF No. 40992], and withdrew all claims at law, maintaining only an equitable claim for rescission.

F. BNC sold the Loan to a third party on or around September 2013.

G. On August 5, 2014, LBHI filed Plan Administrator's Supplemental Objection to Proof of Claim No. 33325 [ECF No. 45590] ("Supplemental Objection").

H. On September 3, 2014, Boor submitted a response to the Supplemental Objection [ECF No. 46232].

I. On September 9, 2014, the Parties appeared before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the United States Bankruptcy Court, Alexander Hamilton Customs House, Courtroom 623, One Bowling Green, New York, New York 10004, to address Boor's equitable claim for rescission, the only claim remaining against BNC.

J. For the reasons stated on the record by both Parties and by the Honorable Shelley C. Chapman, and upon good-faith, arm's-length negotiations between the Parties, the Parties have agreed to resolve Claim No. 33325 pursuant to the terms and conditions set forth in this Stipulation, Agreement and Order.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES, AND, UPON BANKRUPTCY COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. The Recitals set forth above form an integral part of this Stipulation, Agreement and Order and are incorporated fully herein.

2. Upon entry of this Stipulation, Agreement and Order by the Bankruptcy Court (the "Effective Date"), Proof of Claim No. 33325, asserted in the above-captioned proceeding, will be disallowed and expunged with prejudice as to BNC and all Lehman debtors, but without prejudice as to Boor's rights, if any, for rescission of the loan and mortgage in the pending State Court action, against non-debtor persons or entities, who purchased the loan and without costs against either party.

3. The terms of this Stipulation, Agreement and Order are subject to the approval of the Bankruptcy Court and in the event the Bankruptcy Court does not approve this Stipulation, Agreement and Order, it shall be null and void and of no force and effect.

4. This Stipulation, Agreement and Order is solely for the benefit of the Parties and not for any other person or entity and no such person shall be entitled to the benefit of (or even entitled to rely upon) this Stipulation, Agreement and Order.

5. This Stipulation, Agreement and Order can only be amended by Order of the Bankruptcy Court.

6. Each person who executes this Stipulation, Agreement and Order by or on behalf of a Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation, Agreement and Order on behalf of such Party.

7. This Stipulation, Agreement and Order may be executed in counterparts, each of which shall be deemed an original but both of which shall constitute one and the same

instrument, and it shall constitute sufficient proof of this Stipulation, Agreement and Order to present any copy, copies, or facsimiles signed by the Parties here to be charged.

8. This Stipulation, Agreement and Order shall be effective immediately upon its Effective Date and the requirements of Bankruptcy Rule 4001(a)(3) are waived.

9. This Stipulation, Agreement and Order shall be interpreted, construed and enforced exclusively in accordance with the laws of the State of New York.

10. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation, Agreement and Order.

Dated: December 15, 2014

JONES & KELLER, P.C. By: <u>/s/ Michael Rollin</u> 1999 Broadway Suite 3150 Denver, Colorado 80202 Telephone: (303) 573-1600 Facsimile: (303) 573-8133 <i>Attorney for Lehman Brothers Holdings Inc. and Certain of its Affiliates</i>	ANTHONY BALSAMO, ESQ. By: <u>/s/ Anthony Balsamo</u> 111 John Street Suite 800 New York, NY 10038 Telephone: (212) 785-3434 Facsimile: (646)-378-4410 <i>Attorney for Claimants Arthur and Joanne Boor</i>
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/s/ Jeanine Boor
Jeanine Boor

SO ORDERED this 30th day of January, 2015

/s/ Shelley C. Chapman
UNITED STATES BANKRUPTCY JUDGE